IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

RCRev..No. 66 of 2006

RCA.90/2004 OF RENT CONTROL APPELLATE AUTHORITY, ERNAKULAM.
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REVISION PETITIONER (APPELLANT/RESPONDENT):

VIJI P.ISSAC, AGED 36 YEARS,
S/O. ISSAC, PONNAL HOUSE, OORAMANA KARA,
MENMURI VILLAGE, MUVATTUPUZHA.

BY ADV. SRI.DINESH R.SHENOY,
ADV. SRI.JOJO GEORGE.

RESPONDENTS/(RESPONDENT/PETITIONER):

DEEPAK VARKEY SASI ELOOR,
S/O. SASI ELOOR, ELOOR HOUSE, ELAMKULAM KARA,
IYKKARANADU SOUTH VILLAGE, KUNNATHUNADU TALUK,
REP. BY POWER OF ATTORNEY HOLDER DR.SASI ELOOR,
AGED 51 YEARS, S/O. VARKEY,ELOOR HOUSE,ELAMKULAM
KARA, IYKKARANADU SOUTH VILLAGE,KUNNATHUNADU TALUK.

BY ADV. SRI.M.P.ABRAHAM (SR.),
SRI.ABEESH JOSE,
SRI.MILLU DANDAPANI.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 06/12/2007,ALONG WITH R.C.R NO.67/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR & A.K.BASHEER, JJ.

RCR Nos.66 and 67 of 2006

Order

Balakrishnan Nair, J.

These revisions arise from a common Judgment of the Rent Control Appellate Authority in RCA Nos.89/04 and 90/04. The above appeals were filed respectively against the orders of the Rent Controller in RCP Nos.1/02 and 2/02. The brief facts of the case are the following :

2. The landlord has two rooms, bearing Door Nos.IV/141A and IV/141B. Those two rooms were given on rent to the tenant on 10.07.1996 under two separate rent deeds. The rent for the first room was Rs.1,575/- and for the second room was Rs.1,425/0. There was also a stipulation to enhance the rent every year by 5%. But the rent was kept in arrears from 01.04.2000. The arrears of rent in respect of the two rooms were respectively Rs.43,963.25 and 40,873.75. So, eviction was sought under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as the Act). Further, according to the landlord, the tenant dismantled the wall, dividing the two shop rooms and converted those rooms into one room. Apart from that, the tenant constructed an upstair platform in the rooms and to have sufficient

space under the platform, the floor was dug to a depth of 4 ft. While erecting the platform, the walls were also damaged. The said construction activities affected the structural strength of the building. On the above pleadings, eviction was sought under Section 11(4)(ii) of the Act. The landlord also alleged subletting and eviction was sought under Section 11(4)(i). But, since the Rent Controller rejected the said claim and the landlord did not file any appeal or cross appeal against that finding, the same has become final. Therefore, in these revisions, we are not concerned with the ground under Section 11(4)(i).

3. The tenant resisted the Rent Control Petitions, contending that he has deposited an amount of Rs.2,75,000/- as security deposit. The rent deed was executed on 05.01.1994 and not on 10.07.1996. The agreed rent was Rs.2/- per sq.ft. and the total carpet area of the said two rooms was 675 sq.ft. So, according to him, the total rent for both the rooms was Rs.1,350/-. He claims that he has paid rent upto April 2001 and thereafter, it was not paid because, the landlord did not accept the rent offered by him. The allegations of causing damage to the rooms and reducing their utility etc., are denied by him. He has carried out certain repairs to the building, but, they were with the consent of the

landlord. Therefore, the tenant prayed for dismissal of the Rent Control Petitions.

4. Both the RCPs were tried together. From the side of the landlord, PW1 to PW3 were examined. PW1 was the Power of Attorney Holder and father of the landlord. PW2 was the Advocate Commissioner in the connected civil suit. Exts.P1 to P16 were marked from the side of the landlord. From the side of the tenant, RW1 to RW3 were examined. The Rent Controller allowed eviction under Sections 11(2)(b) and 11(4)(ii). On appeal, the Appellate Authority affirmed the said finding. Hence these revisions.

5. We notice that the dispute regarding the rate of rent was resolved by the courts below, mainly relying on the admissions of the tenant, contained in Ext.P14. It is the certified copy of the deposition of the tenant in OS No.15/01 on the files of the Munsiff's Court, Kolenchery. While the tenant was examined as RW1 in this case, he was confronted with the admissions made by him in Ext.P14, regarding the rate of rent as well as the execution of agreement on 10.07.1996. As per the agreement dated 10.07.1996, the rent for the rooms were Rs.1,575/- and Rs.1,425/- respectively. But, RW1 would say that he happened to sign the agreement dated 10.07.1996, without knowing its

contents. The landlord misled him to believe that it is only the renewal of the agreement executed by him on 05.01.1994. But the above version of the tenant was not believed by the Rent Controller, who had occasion to watch his demeanour, while he was examined. Relying on his deposition, the Appellate Authority upheld the said finding of the Rent Controller. In Ext.P14, he has admitted that he has taken two rooms, bearing Door Nos.IV/141A and IV/141B at a rent of Rs.1,575/- and Rs.1,425/- respectively and also agreed to revise the rent by 5% every year. We are also of the view that the explanation offered by the tenant to get over the above admission in Ext.P14, was rightly rejected by the courts below. At any rate, it is a finding of fact, made based on the evidence before the authorities below. The same cannot be described as perverse or based on no evidence. It is certainly a plausible view. If the said rent is admitted, then, there are arrears of rent . So, we find no reason to interfere with the finding of the courts below under Section 11(2)(b).

6. It is admitted position that the tenant has made certain modification to the room for the purpose of making it suitable for running his business. Further, there is no evidence to show that it was done with the permission of the landlord. The courts below, relying on the Commissioner's report and also

taking into account the fact that the Panchayat has assigned two door numbers, treating that there were two rooms and further taking into account the fact that at present, they are in the form of a single room, upheld the contention of the landlord that the tenant has made material alterations to the tenanted premises by removing the dividing wall between the two rooms. The case of the landlord that there is construction of an upstair portion within the room and digging the ground to have sufficient space for the lower portion, is also believed by the courts below, notwithstanding the assertions to the contrary, made by the tenant. It is essentially, a finding of fact, which, this Court cannot disturb under Section 20 of the Act. We fully agree with the reasons and conclusions of the courts below on the ground under Section 11 (4)(ii). The view taken by the authorities below is certainly a plausible view on the facts and materials before them.

7. The learned counsel for the revision petitioner pointed out that the courts below did not say anything on the security deposit made by him. The learned counsel for the landlord submitted that he will refund the amount at the time the tenanted premises are vacated, after adjusting the amounts, if any due to him. In the result, the Rent Control Revisions fail and they are

dismissed with costs.

8. The learned counsel for the revision petitioner prayed for some time to vacate the premises. We heard the learned counsel for the landlord also, on this point. Having regard to the facts of the case, the tenant is given three months' time from today to vacate the premises, on condition that he files an unconditional undertaking before the Execution Court in the form of an affidavit, undertaking to vacate the premises within three months from today. The affidavit in this regard shall be filed within three weeks from today. The tenant shall also deposit the entire arrears of rent within one month from today and shall continue to pay the monthly rent at the rate found due from him by the Rent Controller and the Appellate Authority, till the rooms are vacated.

K.BALAKRISHNAN NAIR,JUDGE

06.12.2007 **A.K.BASHEER, JUDGE**

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